

DOCUMENT RESUME

02901 - [A1953022]

[Overtime Compensation during Period of Training]. B-189006.
July 11, 1977. 5 pp. + 2 enclosures (2 pp.).

Decision re: Raymond J. McManus; by Robert P. Keller, Deputy
Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation
(305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel
Management (805).

Organization Concerned: National Archives and Records Service:
Federal Archives and Records Center, Philadelphia, PA.

Authority: Fair Labor Standards Act of 1974. 5 U.S.C. 4109. 5
C.F.R. 410.602(a),(b). F.P.M. ch. 410, para. 6-2.b(1).
B-186758 (1977). 39 Comp. Gen. 453.

A Federal employee requested reconsideration of a denial of his claim for overtime compensation for a period spent in a mandatory training session scheduled during an overtime period. The claim was not allowed since the entitlement to overtime is prohibited by law, and the training did not qualify under available exceptions. The employee's right to compensation could not be enlarged by unauthorized acts of administrative officials. (Author/SC)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-189006

DATE: July 11, 1977

**MATTER OF: Raymond J. McManus - Overtime Compensation
During Period of Training**

DIGEST: Employee claims overtime compensation for mandatory Saturday training session which agency erroneously scheduled during overtime period. Payment of overtime during training period is prohibited by 5 C.F.R. § 410.602(a) unless training qualifies under one of exceptions in 5 C.F.R. § 410.602(b) or agency obtains permission from CSC. Claim may not be allowed since entitlement to overtime is prohibited by law and training does not qualify under 5 C.F.R. § 410.602(b). Employee's right to compensation is governed by applicable statute and regulation and absent statutory provision for relief such rights cannot be enlarged by unauthorized acts of administrative officials.

This is in response to the letter of April 20, 1977, from Raymond J. McManus, appealing the Claims Division Settlement 2-2726648, dated April 8, 1977, denying his claim for overtime compensation.

Mr. McManus is the Chief, Accessions and Disposal Branch, Federal Archives and Records Center, Philadelphia, Pennsylvania. He was assigned to a training course from Monday, November 29, 1976, through Saturday, December 4, 1976, in Philadelphia. Because his normal workweek is Monday through Friday, 8 a.m. to 4:30 p.m., Mr. McManus claims overtime for the training performed on Saturday, outside of his normal workweek.

The Claims Division denied Mr. McManus' claim for overtime compensation on the basis that 5 U.S.C. § 4109 (1970) which prohibits the payment of overtime compensation to an employee during a period of training. The only exceptions to this prohibition are those contained in 5 C.F.R. § 410.602(b) (1977). The Claims Division held that Mr. McManus' situation did not fall within one of the four exceptions contained in section 410.602(b).

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The Claims Division also stated that certain provisions of the General Services Administration (GSA) regulations concerning overtime compensation pertained only to nonexempt employees under the provisions of the Fair Labor Standards Act of 1974 (FLSA) and were not applicable to Mr. McManus as an employee holding a position classified as exempt from the provisions of the FLSA. Mr. McManus has now submitted citations to a GSA regulation pertaining to compensatory time in lieu of overtime pay.

Although the issue was not specifically raised by Mr. McManus, this decision will address the question of whether the overtime performed by Mr. McManus qualifies under one of the four exceptions, contained in 5 C.F.R. § 410.602, to the prohibition against the payment of overtime pay to an employee for the period he is on training.

Section 410.602 provides:

"(a) Except as provided by paragraph (b) of this section, no funds appropriated or otherwise available to an agency may be used for the payment of premium pay to an employee engaged in training by, in, or through Government facilities or non-Government facilities.

"(b) The following are excepted from the provision in paragraph (a) of this section prohibiting the payment of premium pay:

"(1) An employee given training during a period of duty for which he is already receiving premium pay for overtime, night, holiday, or Sunday work, except that this exception does not apply to an employee assigned to full-time training at institutions of higher learning;

"(2) An employee given training at night because situations which he must learn to handle occur only at night;

"(3) An employee given training on overtime, on a holiday, or on a Sunday because the cost of the training, premium pay included, are less than

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the costs of the same training confined to regular work hours; and

"(4) An employee given training during periods of temporary assignment covered by § 550.162(c) of this chapter.

"(c) An employee who is excepted under paragraph (b) of this section is eligible to receive premium pay in accordance with the pay authorities applicable to him."

Since Mr. McManus' training was during a period for which he was not receiving premium pay, the training was not conducted at night, and the training was not during a period of temporary assignment, the only one which remains for consideration is the third exception.

In an administrative report to the Claims Division dated March 16, 1977, GSA determined that the cost of training, premium pay included, was more than the cost of holding over the employees to complete the training on Monday. Therefore, GSA argues that the exception contained in 5 C.F.R. § 410.602(b)(3) is not applicable. However, GSA states that the attendance at the Saturday training session was mandatory. Thus, GSA argues that they can require an employee's attendance at a training session during a period for which premium pay would ordinarily be paid regardless of whether the employee would be entitled to premium pay under one of the four exceptions outlined in 5 C.F.R. § 410.602(b).

We believe such a view does not comply with the regulations contained in chapter 410 of the Federal Personnel Manual. In particular, paragraph 6-2.b(1) of that chapter states, in pertinent part that:

"Agencies generally are able to avoid scheduling training sessions during periods for which premium pay would ordinarily be paid. An agency which believes it is faced with an unavoidable need to schedule a training session during such a period may (if the situation is not covered by one of the standing exceptions described in * * * [5 C.F.R. § 410.602(b)]) submit a request for an exception to the prohibition on premium pay * * *. It is urged that such a request

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be submitted sufficiently in advance so that a decision can be made on the request and communicated to the agency before the training begins. Employees participating in such a training session can then be made aware of their pay status for that session. If the agency's request for an exception is rejected (or if the agency chose not to request an exception), the trainees ought to be informed that their attendance at that training session would be voluntary—if it decides to go ahead with the session as initially planned." (Emphasis added.)

The above-quoted provision provides that an agency may not require an employee's attendance at a training session during a period for which premium pay would otherwise be payable unless the Civil Service Commission (CSC) has granted an exception or the training qualifies under one of the four exceptions in 5 C.F.R. § 410.602(b). Since GSA did not seek an exception from the CSC and the training did not qualify under one of the four exceptions in section 410.602(b), GSA was in error to require Mr. McManus to attend the Saturday training session.

Notwithstanding the above, Mr. McManus is not entitled to overtime compensation for the Saturday training since the payment of premium pay is prohibited unless the training qualifies under one of the above-described exceptions. As stated above, Mr. McManus' training did not so qualify. It is clear that an employee's right to compensation is governed by applicable statute and regulation and absent any statutory provision for relief such rights cannot be enlarged by the unauthorized acts of administrative officials. Matter of Dr. Keith A. Baker, B-186758, March 23, 1977. Accordingly, overtime compensation may not be paid to Mr. McManus for the training performed on Saturday, December 4, 1976. Neither may he be granted compensatory time in lieu of overtime for the period of training since an employee must qualify for overtime pay in order to be eligible for compensatory time. See 39 Comp. Gen. 453 (1959).

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In view of the above, Mr. McManus' claim for overtime compensation or compensatory time in lieu of overtime compensation must be denied.

R. H. K. 11/14
Deputy Comptroller General
of the United States

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Director, Claims Division

10/11/77

Comptroller General

Raymond J. McManus - Claims for overtime compensation -
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Returned herewith is file Z-7726648 along with our decision in this
matter, B-189006, dated today.

Attachments



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-189606

JUL 11 1977

The Honorable Richard Schweiker
United States Senate

Dear Senator Schweiker:

Further reference is made to your letter dated January 17, 1977, concerning the claim of Mr. Raymond J. McManus, 247 Revere Road, Clifton Heights, Pennsylvania 19018 for overtime compensation.

Enclosed is a copy of our decision of today in which we held that current law and regulation prohibit the payment of overtime compensation or compensatory time in lieu of overtime compensation under the circumstances in his case. We regret that we were unable to provide a more favorable response to your constituent.

Sincerely yours,

R. F. Keller

Deputy Comptroller General
of the United States

Enclosure